No. 87-686

Supreme Court, U.S.
FILED
NOV 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

HAROLD B. SCHLENGER,

Petitioner,

v.

MONICA P. SCHLENGER, A/K/A MONICA PETRICEK, INDIVIDUALLY AND AS TRUSTEE OF THE UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY, CAMPBELL INVESTMENT COMPANY, AND HARMONIQUE FARMS CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

IRVIN M. FREILICH
HANNOCH WEISMAN
A Professional Corporation
Attorneys for Respondents
Four Becker Farm Road
Roseland, New Jersey 07068
(201) 535-5300

6450
Lutz Appellate Printers, Inc. • NJ (201) 257-6850 • (800) 3 APPEAL • NY (212) 340-4640 • MA (617) 542-1114
DC (202) 783-7288 • PA (215) 925-6500 • USA (800) 5 APPEAL

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

Should a petition for writ of certiorari be granted where the sole ground urged by petitioner is that the lower courts improperly resolved a question of fact in granting respondents' motion for summary judgment dismissing petitioner's complaint.

RULE 28.1 LIST

The respondents, United Wool Piece Dyeing and Finishing Company, Campbell Investment Company and Harmonique Farms Corporation are not the parent of any other corporation, are not affiliated with any other corporation nor are they the subsidiaries of any other corporation.

TABLE OF CONTENTS

Page

Question Presented i

Rule 28.1 List ii

Table of Contents iii

Table of Citations iii

Statement of the Case 2

Reasons Why the Petition Should Be Denied:

I. The sole issue posed by the petition is whether the lower courts improperly decided a question of fact in granting respondents' motion for summary judgment. Such an issue is a particularly inappropriate ground for granting the petition for certiorari. ... 4

II. The district court correctly determined the motion for summary judgment 5

Conclusion 8

TABLE OF CITATIONS

Cases Cited:

Anderson v. Liberty Lobby, 54 U.S.L.W. 4755 (U.S. June 25, 1986) 5, 6, 7

Celotex v. Catrett, 54 U.S.L.W. 4775 (U.S. June 25, 1986) 5, 6

Contents

Page

C.J.D. Rudolph v. United States, 370 U.S. 269 (1962) ... 5

Goodman v. Lukens Steel Co., 55 U.S.L.W. 4881 (U.S. June 19, 1987) 5

Matsushita Electric Industrial Co. v. Zenith Radio Corporation, 54 U.S.L.W. 4319 (U.S. Mar. 26, 1986) 5, 6

Statute Cited:

29 U.S.C. § 1001 2

APPENDIX

Appendix A—Final Judgment of Divorce 1a

Appendix B—Decision of the Matrimonial Court 6a

Appendix C—Department of Labor Report of Interview of Harold B. Schlenger 15a

No. 87-686

In The

Supreme Court of the United States

October Term, 1987

HAROLD B. SCHLENGER,

Petitioner,

v.

MONICA P. SCHLENGER, A/K/A MONICA PETRICEK, INDIVIDUALLY AND AS TRUSTEE OF THE UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY, CAMPBELL INVESTMENT COMPANY, AND HARMONIQUE FARMS CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

The respondents Monica Petricek, United Wool Piece Dyeing and Finishing Company Pension Trust, United Wool Piece Dyeing and Finishing Company, Campbell Investment Company and Harmonique Farms Corporation respectfully request that this Court deny the petition for writ of certiorari seeking review of the Third Circuit's opinion in this case and for summary reversal. The opinion is annexed to petitioner's brief at 1a.

STATEMENT OF THE CASE

The complaint in this matter was filed by petitioner, Harold B. Schlenger, on May 1, 1985 and amended on July 25, 1985, under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") and New Jersey common law (Pet. 7a). The complaint was the last in a series of lawsuits commenced by petitioner beginning in 1977 when petitioner instituted divorce proceedings against his former spouse, respondent, Monica Petricek. A judgment of divorce was entered on September 16, 1981, which awarded all of the assets of the marriage to Monica Petricek except for a putative pension benefit described in the judgment of divorce as follows:

> 8. The Pension Fund of the United Wool Piece Dyeing and Finishing Co. which is presently under investigation by New Jersey Department of Labor is to be distributed to the beneficiaries of such Pension Fund as those interests are determined to exist by said Department of Labor.*

(Pet. 14a, Resp. 4a).

---

* The paragraph of the judgment was incorrectly drafted. In 1981, the Pension Fund was being investigated by the United States Department of Labor. More importantly, the Department of Labor never determined that petitioner had any putative entitlement in the Pension Fund (Pet. 13a, 15a-16a).

Up until the time that petitioner and Ms. Petricek separated in 1977, petitioner was involved in the United Wool Piece Dyeing and Finishing Company ("Company") as a salesman. The Company was founded by Ms. Petricek's former husband and she inherited it upon his death (Pet. 8a). By 1974, the Company had ceased operations and in 1976, the Company ceased making contributions to the Pension Fund. By its own terms, the plan terminated in September 1978 (Pet. 9a-10a).

Both petitioner and respondents moved for summary judgment in the district court. The opinion of the court rendered on March 24, 1986 contains the factual finding which petitioner now claims was improper. However, there was no genuine issue of material fact as to that issue given the unambiguous documents and evidence on which it was based.

The district court first noted that in 1977, petitioner brought an action against Ms. Petricek for dissolution of the marriage (Pet. 11a). This followed the revelation by Ms. Petricek in 1977 that petitioner had a girlfriend and was fooling around, whereupon Ms. Petricek severed all personal and business relationships with petitioner (Resp. 13a-14a). In fact, the Superior Court of New Jersey enjoined petitioner from any continued involvement in the business or activities of the respondents (Pet. 12a). The latter finding was taken directly from Petitioner's Certification to the district court (Pet. 12a). Also, in his statement to the Department of Labor, petitioner acknowledged that his relationship with the Company was severed in April 1978 (Resp. 16a). The fact that petitioner was barred from the business in 1978 is similarly supported by the opinion of the matrimonial court (Resp. 14a). These undisputed facts, together with the April 9, 1978 corporate resolution, formed the basis for the court's finding that petitioner's employment was terminated as of April 9, 1978.

Because his employment was terminated by April 1978,

petitioner was not a participant in the Pension Trust when it terminated by its own terms in September 1978 (Pet. 39a). Petitioner received his normal benefits under the Plan when he surrendered his life insurance policies in 1977 and 1978 for their cash value (Pet. 13a). In addition, the lower courts concluded as a matter of law that petitioner did not have an interest in the plan's auxiliary fund because it was not an "accrued" benefit under ERISA (Pet. 3a).

Summary judgment was granted to respondents dismissing petitioner's complaint on June 12, 1986 (Pet. 75a). Petitioner sought reconsideration of the district court's decision, which motion was denied on December 5, 1986 (Pet. 76a). Petitioner then appealed to the Third Circuit Court of Appeals (Pet. 1a), and despite petitioner's assertion that a genuine issue of material fact existed as to when his employment was terminated and that summary judgment was inappropriately granted, the Third Circuit affirmed the district court's judgment (Pet. 3a-5a).

REASONS WHY THE PETITION SHOULD BE DENIED

I.

The sole issue posed by the petition is whether the lower courts improperly decided a question of fact in granting respondents' motion for summary judgment. Such an issue is a particularly inappropriate ground for granting the petition for certiorari.

Petitioner's application for a writ of certiorari is based entirely on his contention that the lower courts, in granting summary judgment for respondents and in affirming that judgment, resolved a factual issue which petitioner disputed through his certification (Pet. at 13-14, 17-18). This is an insufficient ground for granting the petition. Generally, this Court will not undertake to independently examine the record where both courts below have

agreed on the facts. *See Goodman v. Lukens Steel Co.*, 55 U.S.L.W. 4881, 4883 (U.S. June 19, 1987).

The petition raises an issue unique to this case and to the particular facts in this case. The questions presented are of no significance to other pending cases. Where review of facts by the Supreme Court would be of no importance save to the litigants themselves, the appropriate disposition is to deny the petition for certiorari. *C.J.D. Rudolph v. United States*, 370 U.S. 269, 270 (1962).

Granting certiorari for the reasons espoused by petitioner would simply result in a review of the record and a determination of whether summary judgment was properly entered by the district court and concurred with by the Third Circuit. Due to the inherently factual nature of the issue presented, there is no conflict between the courts of appeal justifying review by this Court. Accordingly, the Court should deny petitioner's application for a writ of certiorari.

II.

The district court correctly determined the motion for summary judgment.

Petitioner argues that there is a conflict among the Circuits with respect to summary judgment motions which calls for the supervision and overview of this Court (Pet. at 12). However, there is no "conflict" among the Circuits by reason of this Court's recent decisions in *Matsushita Electric Industrial Co. v. Zenith Radio Corporation*, 54 U.S.L.W. 4319 (U.S. Mar. 26, 1986); *Anderson v. Liberty Lobby*, 54 U.S.L.W. 4755 (U.S. June 25, 1986) and *Celotex v. Catrett*, 54 U.S.L.W. 4775 (U.S. June 25, 1986). Petitioner has failed to cite to any of these decisions.

In these cases, this Court reaffirmed the premise that summary judgment is appropriate where there is a lack of a genuine, triable, issue of material fact. The basic premise behind the summary judgment procedure is "to secure the just, speedy and inexpensive determination of every action." *Celotex v. Catrett,* 54 U.S.L.W. 4775, 4778 (U.S. June 25, 1986).

> When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. (Citations omitted). In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a *genuine issue for trial.*"

(Emphasis in original.) *Matsushita Electric Industrial Co. v. Zenith Radio Corporation,* 54 U.S.L.W. 4319, 4322 (U.S. Mar. 26, 1986).

As this Court emphasized in *Anderson v. Liberty Lobby, Inc.,* 54 U.S.L.W. 4755 (U.S. June 25, 1986):

> [T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.
>
> * * *
>
> As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be

counted.

* * *

> There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is the need for a trial — whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

(Emphasis in original.) 54 U.S.L.W. at 4757-58.

Petitioner here argues that because he submitted a certification disputing, in conclusory fashion, a factual finding ultimately relied upon by the district court, this Court should reverse the summary judgment decision (Pet. at 12-14). As shown in the Statement of the Case, *supra*, the finding that petitioner was terminated in April 1978, is aptly supported by petitioner's own statement to the Department of Labor, the opinion of the matrimonial court and petitioner's certification to the district court. Based upon these undisputed documents, the district court did not err when it found that there were no genuine issue of material fact requiring a trial and properly granted respondents' motion for summary judgment dismissing petitioner's complaint.

CONCLUSION

For the above stated reasons, the petition for a writ of certiorari and request for summary reversal should be denied.

Respectfully submitted,

IRVIN M. FREILICH
HANNOCH WEISMAN
A Professional Corporation
Attorneys for Respondents

APPENDIX A — FINAL JUDGMENT OF DIVORCE

BERNARD RUDD
81 Two Bridges Road
Fairfield, New Jersey 07006
201-227-0001
ATTORNEY FOR DEFENDANT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY

DOCKET NO. M-20042-77

CIVIL ACTION

HAROLD B. SCHLENGER,

Plaintiff,

vs.

MONICA SCHLENGER,

Defendant.

FINAL JUDGMENT OF DIVORCE

This matter having come on to be heard before the Honorable Thomas L. Yaccarino on August 4, 1981, in the presence of BERNARD RUDD, ESQ., Attorney for the Defendant, Monica Schlenger and the Plaintiff, Harold B. Schlenger, appearing Pro Se, having withdrawn his Complaint and the Defendant, Monica Schlenger, having withdrawn her Counterclaim; and both parties having made a Motion to amend the pleadings to provide each

with a cause of action for 18 months separation, which was granted by the Court to both the Plaintiff and Defendant; and the parties having offered proofs in open Court as to outstanding questions concerning alimony, equitable distribution, counsel fees and costs and all other matters outstanding between them; and the matter proceeded as a contested case; and the Court having heard and considered the proofs in this action and the arguments of counsel; and it appearing that the Plaintiff, HAROLD B. SCHLENGER and the Defendant, MONICA SCHLENGER, were joined in the body of matrimony on or about February 2, 1956; and that each party has lived separate and apart from the other in different habitations for more than eighteen (18) consecutive months and that there is no reasonable prospect of reconciliation; and that at the time this cause of action in favor of each of the parties hereto arose, both parties were bona fide residents of this state and each party has continued so to be down to the time of the commencement of this action; and that each party hereto has been or more than one year next preceding the commencement of this action a bona fide resident of this state; and it appearing that jurisdiction herein has been acquired by personal service of process, and for good cause shown:

IT IS THEREUPON on this 16th day of September, 1981, by the Superior Court, Chancery Division of the State of New Jersey, ORDERED and ADJUDGED, and the said Court by virtue of the power and authority of this Court and of the acts of the Legislature in such case made and provided, does hereby ORDER and ADJUDGE that the said Plaintiff, HAROLD B. SCHLENGER and the Defendant, MONICA SCHLENGER, be divorced from the bond of matrimony each for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof.

Appendix A

AND, IT IS FURTHER ORDERED AND ADJUDGED that:

1. The Ante-Nuptial Agreement between the parties is valid and binding upon them.

2. All of the assets held by Monica Schlenger prior to the marriage are adjudged to be the source of all of the assets of the marriage as they exist and in regard to which proofs were adduced at the trial.

3. All assets existing prior to the marriage and all assets owned by the parties during the marriage are awarded to Monica Schlenger as an equitable distribution to her.

4. The exceptions to such award are as follows:

a. Any personal possessions, including an automobile in the possession of the Plaintiff, Harold B. Schlenger, are awarded to him.

b. Harold B. Schlenger is awarded one share (out of 100 shares) of Campbell Investment Company, Inc. capital stock.

c. Harold B. Schlenger is awarded one share (out of a total of 124 shares) of United Wool Piece Dyeing & Finishing Company, capital stock.

5. Harold B. Schlenger is awarded no other assets in this action.

6. It is a condition of the award of the shares of stock (one

share in Campbell Investment Company, Inc. and one share in United Wool Piece Dyeing & Finishing Company) that said stock shall be purchased by Monica Schlenger from Harold B. Schlenger at a price to be determined by the Court from the existing accounting statements submitted in the course of the trial or by its own self appointed accountant who shall be required to make analysis of the corporate books. The court shall hereafter order a new accounting or in lieu thereof determine a monetary figure from the existing evidence and in either case render its decision as to the amount to be paid by Monica Schlenger to Harold B. Schlenger, not later than September 24, 1981. Monica Schlenger shall make payment in such sum to be determined, forthwith, and Harold B. Schlenger shall immediately thereupon turn over such shares of stock (one share of Campbell Investment Company, Inc. and one share of United Wool Piece Dyeing & Finishing Company) and thereafter all claims of Harold B. Schlenger shall be terminated.

7. The stock of all other corporations listed during trial as owned by the parties or both of them is hereby awarded as equitable distribution in toto to Monica Schlenger and Harold B. Schlenger shall have no claim upon such stock whatsoever whether he is possessed of the Certificates or not.

8. The Pension fund of the United Wool Piece Dyeing & Finishing Company which is presently under investigation by the New Jersey Department of Labor is to be distributed to the beneficiaries of such Pension Fund as those interests are determined to exist by said Department of Labor.

9. Claims made by Harold B. Schlenger against Monica Schlenger and/or the companies owned or controlled by Monica Schlenger, including but not limited to a repayment for an alleged

loan of $50,000.00 for the payment of taxes, a claim for commissions alleged due and any other such claim are hereby denied. The Court specifically finds that neither Monica Schlenger nor any of her companies owes Harold B. Schlenger any monies whatsoever other than those described hereinabove due him specifically as equitable distribution.

10. All real estate determined to be owned by Monica Schlenger, the companies under her control and more specifically described as Harmonique Farms and One Canal Street, Passaic, New Jersey, are granted to Monica Schlenger as equitable distribution. (They are presently owned by Campbell Investment Company, Inc. and Harold B. Schlenger has no right, title or interest in such realty.

11. All bank accounts, investment accounts, deposit boxes, certificates of deposit, choses in action and contractual rights, which are in the name of Monica Schlenger and/or in the name of Monica Schlenger and Harold B. Schlenger and the contents of them are awarded to Monica Schlenger as equitable distribution and Harold B. Schlenger shall have no ownership in them whatsoever.

12. Alimony to the Plaintiff, Harold B. Schlenger, is denied.

13. Each of the parties shall pay their own counsel fees and/or the fees of any experts for services rendered.

14. Monica Schlenger is hereby directed to resume the use of her prior name.

s/ Thomas L. Yaccarino
THOMAS L. YACCARINO,
J.S.C.

APPENDIX B — DECISION OF THE MATRIMONIAL COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY COURT
Docket No. M-20042-77

HAROLD B. SCHLENGER,

Plaintiff,

v.

MONICA P. SCHLENGER,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY COURT
Docket No. L-40499-77

HAROLD B. SCHLENGER,

Plaintiff,

v.

MONICA P. SCHLENGER,

Defendant.

Appendix B

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY COURT
Docket No. C-3942-77

HARMONIQUE FARMS, INC., etc.,

Plaintiffs,

v.

HAROLD SCHLENGER,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY COURT
Docket No. L-39566-78

UNITED WOOL PIECE DYEING & FINISHING CO., INC., etc., et al,

Plaintiffs,

v.

HAROLD SCHLENGER,

Defendant.

August 4, 1981

Appendix B

Decision of the Court

[2] BEFORE:

HON. THOMAS L. YACCARINO, J.S.C.

APPEARANCES:

HAROLD B. SCHLENGER, *pro se.*

BERNARD RUDD, ESQ., for Monica P. Schlenger.

Daniel Greenspan
Official Court Reporter
Monmouth County Court House
Freehold, New Jersey 07728

[3] THE COURT: This matter comes before the Court on a complaint filed by the plaintiff, Harold B. Schlenger, seeking a dissolution of the marriage entered into between him and his spouse, Monica.

In addition thereto, there has been joined with this action an action instituted by Monica P. Schlenger against Harold B. Schlenger in which they have brought into fruition all litigation which

evolved from the corporate structure or setup known as what Mr. Rudd has referred to as the Monica Empire or corporations.

A little background: Monica Petricek was married to an individual who was involved in the fabric business, dyeing or whatever, but basically it was the fabric business. As a result of her own participation and inheritance from her husband she and, I believe, her brother-in-law were associated in that business, I believe her brother-in-law is demised, and it ended up in Monica owning almost in toto —

MR. RUDD: Bruno was the son.

THE COURT: She was in business with the son? He's alive?

[4] MR. SCHLENGER: Yes.

THE COURT: He's not around?

MR. SCHLENGER: He's around.

THE COURT: He's not involved in any of this?

MR. SCHLENGER: Pardon? I didn't hear you.

THE COURT: He's not involved in this.

MR. SCHLENGER: No, he's not in this hearing.

THE COURT: No, he's not involved in any business that is involved in this hearing.

MR. RUDD: He is not.

THE COURT: Mr. Schlenger couldn't answer a question directly if his life depended on it.

MR. SCHLENGER: I didn't hear the question.

THE COURT: Well, he is not involved in this litigation.

MR. SCHLENGER: I said no.

THE COURT: Or in any other case involved here.

MR. SCHLENGER: No.

THE COURT: That's good. You are learning [5] how to answer questions.

Now, as a result of the turn of events Monica Petricek ended up owning some paramount companies, United Wool Piece Dyeing, Campbell Investment, United Wool Dyeing and Finishing. There were some principal companies. She owned and operated this business together with valuable real estate.

Appendix B

In 1956 she married the plaintiff in the matrimonial action, Harold B. Schlenger. Prior to her marriage and after conferring with counsel a prenuptial or antenuptial agreement was prepared, and Mr. Morris indicated that he conferred with Mr. Schlenger and advised him that if he was going to marry Monica he was going to sign this agreement. Incidentally, I observe for the record that even though I have been a chancery judge for quite a while and have taken equity courses and matrimonial courses, this is the first time I have ever seen a prenuptial agreement which acknowledges the fact that "What I own I obtained from so and so and I wish to preserve my estate for the benefit of my son, so that when you marry me you better know what I have at [6] the time I have it and at the time I give it I intend it for the benefit of my child and, if you marry me, you are not going to acquire any interest in what I have," and that is the central theme.

That is very important because that is like a polestar, and that polestar is thrown up there in the heavens, and this marriage and this relationship is keyed into that polestar, because at all times, in all dealings in the business, Monica Schlenger, who appears in many of these stock transfers, and many of these corporations, which he had a penchant for incorporating, she remains named in many instances as Monica Petricek.

During the course of this marriage, obviously, business goes downhill and, in the middle 70's,

notwithstanding Mr. Schlenger's characterization, for all intents and purposes, what had been viable operating companies which were interlocked one with the other, dependent on the other for life, ceased doing business. What is happening is that facilities are being rented out to third parties, space, machinery, et cetera, and income is derived.

[7] Concurrently, the marital home is moved from Essex County to Monmouth County, but no property is purchased by any individuals. The corporation buys property, Campbell Investment buys a large tract of land, which has been appraised by the Court's expert, and is designated as Harmonique Farms, which it doesn't take a lot of imagination to figure out it is Harold and Monica. But title to that remained in the corporation, which is almost exclusively owned by Monica Schlenger or Monica Petricek, 98 per cent. The only thing that is more than that is the soap that was advertised as being 99 and 44/100 percent pure. That means almost exclusive.

Then for some reason, in order to mortgage the farm and get money in a takedown, which is a common, everyday financial transaction, a third corporation was formed called Harmonique Farms, and a fictitious sale is posted. When I say fictitious, I don't mean one with the intent to defraud anybody, because the original signatory remained liable on the note. But the transfer is made, transferring title from Campbell Investment to [8] Harmonique Farms, and there is a take-down

of some cash on refinancing. The same farm, the same buildings, the same fences, the same posts, are owned by Campbell. There was refinancing through the Land Bank. Mr. Bathgate worked out that financial transaction. I say again I don't mean to indicate sleight of hand but it was done to achieve financial benefit and not change of title.

This marriage runs into difficulty. The main difficulty appears to be, without having a general designation of fault, that Mr. Schlenger has found a new interest. Feelings are hurt, emotions run high, and he is shut out, shut out of the marital home, corporate activities, and, like Bill Bailey, he finds himself with a fine tooth comb.

He files a complaint seeking a divorce from the defendant in the matrimonial action on the ground of extreme cruelty or cruelty, alleging her conduct. She answers and counterclaims and seeks a cruelty divorce on the ground of philandering with a third party, with whom he now resides, by the way, [9] and whose conduct resulted in dissolution of her marriage. This Court takes judicial notice of its own records and judgments and the Court notes a final judgment of divorce has been entered in that Diane action, naming this episode as part of that cause of action.

MR. SCHLENGER: I'm sorry, I didn't hear you.

THE COURT: That's all right. Buy a

transcript. Thank God, I don't have to repeat myself.

As a result of his conduct with Diane, Lady Di, corporate meetings are held, perhaps not in strict observance of the Statute of Corporations, and he is canned. At every level that Monica can shut him out, she shuts him out.

He comes to court, says, "I don't have a job, I'm living in a motel, award me alimony pendente lite," and the Court does. Through this trial it has become very obvious to the Court that Mr. Schlenger is a sophisticated, talented mover, who is street-wise and educated formally, somewhat of a bon vivant and perhaps even raconteur . . . .

APPENDIX C — DEPARTMENT OF LABOR REPORT OF INTERVIEW OF HAROLD B. SCHLENGER

Labor-Management Services Administration

REPORT OF INTERVIEW

Date of Interview: 8/12/81

HAROLD SCHLENGER, P.O. Box 1083, Bloomfield, N.J. (467-2984), was interviewed at LMSA offices in East Orange, N.J. SCHLENGER, who had been interviewed at an earlier date, was asked for his voluntary cooperation.

In response to questioning, SCHLENGER submitted the following information:

Since prior to 1968 he was the Vice President of United Wool Piece Dyeing and Finishing Co. (United Wool) He was also an officer of the following companies that were owned and/or operated by himself and his former wife MONICA PETRICEK:

1. United Wool Dyeing and Finishing Co.

2. Cambell Investment Co. which owns property that has gross income of $200,000 per year.

3. Harmonique-Farms which consists of 40 acres and a farm in Middletown, N.J. The property is owned by Campbell Investment Co.

Presently there are foreclosure proceedings against the property.

4. United Bonders Ltd and United Combiners Corp. Both companies still own property but are no longer operating companies.

Appendix C

5. 130 E. 35th St. Inc., a subsidiary of Campbell Investment Co. The property owned by this company was transferred to MONICA PETRICEK who shortly afterward sold the property for $350,000.

6. MONICA Holding Co. owned the house located at 469 Ridgewood Ave. Glen Ridge, N.J. the house was sold in March 1978.

7. Red Ball Trucking Co., Brussels Mills, Pia Monique, and Imex Group were all operating companies that he believes have ceased operations but may still retain assets.

SCHLENGER stated he was an officer of each of the above companies, and was familiar with their financial operations until 1978 when he severed his connection with all of them.

* * *

In April of 1978 his relationship with United Wool and the Pension Trust were severed. At the time United Wool was making contributions to a welfare fund by paying insurance premiums to Equitable.

* * *